STATE OF MICHIGAN

COURT OF APPEALS

KE DING,

Plaintiff-Appellant,

v

AUTOLIV ASP, INC., and FRED SHOKOOHI,

Defendants-Appellees.

UNPUBLISHED
November 22, 2011

No. 299330
Oakland Circuit Court
LC No. 2009-104715-CL

Before: M. J. KELLY, P.J., and SAAD and O'CONNELL, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court's order granting summary disposition in favor of defendant Autoliv pursuant to MCR 2.116(C)(10), and dismissing plaintiff's claims of discrimination, retaliation, and intentional infliction of emotional distress.[1] We affirm.

Plaintiff, who is of Chinese national origin, worked for defendant from April 2008 until May 2009. Defendant terminated her employment and indicated that the termination was part of a reduction in force necessitated by an economic downturn. Plaintiff posits that she was terminated because of her ethnicity.

Plaintiff sued defendant and Shokoohi, asserting claims under the Elliot-Larsen Civil Rights Act (CRA), MCL 37.2101 *et seq*., and a claim for infliction of emotional distress. The trial court entered an order stating that defendant would be filing a motion for summary disposition and requiring that the motion be filed by May 26, 2010. The order also set a hearing date for the summary disposition motion and required plaintiff's response to the motion to be filed by June 16, 2010. Defendant timely filed its motion for summary disposition. Plaintiff's response to the motion was untimely, and the trial court did not accept the response for filing. However, at the hearing on summary disposition, the trial court allowed plaintiff to present arguments on the motion.

[1] Plaintiff's claim of appeal names both defendants as appellees. However, defendant Autoliv asserts that plaintiff never properly served a complaint upon defendant Shokoohi, and that Shokoohi is not a proper party to the appeal. Plaintiff does not dispute this assertion. Accordingly, our references to "defendant" pertain to Autoliv.

Plaintiff first argues on appeal that the trial court erred by refusing to accept her response to the summary disposition motion. We review the trial court's decision for abuse of discretion. *Kemerko Clawson LLC v RXIV Inc*, 269 Mich App 347, 349; 711 NW2d 801 (2005). A trial court has considerable latitude in establishing a scheduling order. See MCR 2.401(B)(2). Here, the trial court established a briefing schedule, and plaintiff failed to comply with the schedule. The trial court was apparently unpersuaded by plaintiff's assertion that she did not receive the scheduling order, and we find nothing in the record to contradict the trial court's conclusion. In light of the broad discretion a trial court enjoys in scheduling matters of trial conduct, we conclude that the court was within its discretion to refuse to allow plaintiff to file the tardy brief. See *In re King*, 186 Mich App 458, 466; 465 NW2d 1 (1990). Moreover, plaintiff presented much of the information contained in her brief to the trial court at the summary disposition hearing.

Plaintiff next argues that genuine factual issues precluded summary disposition in this case. We review de novo the grant of summary disposition, viewing the facts of the lower court record in the light most favorable to the nonmoving party. *Joliet v Pitoniak*, 475 Mich 30, 35; 715 NW2d 60 (2006). We note that at the summary disposition hearing, plaintiff relied in part on a document that contained a matrix which rated employees' work skills. Plaintiff argued that the matrix established a prima facie case of discrimination, on the ground that all employees of Chinese origin had inferior ratings. Defendant submitted the matrix in its summary disposition materials; accordingly, the trial court was able to consider the matrix before issuing its ruling.

To prevail in an employment discrimination suit, the plaintiff must establish a causal link between the defendant's discriminatory animus and the challenged employment decision. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 132; 666 NW2d 186 (2003). The plaintiff may prove discriminatory treatment by direct or indirect evidence. *Id*. Direct evidence requires proof that a discriminatory motivation was more likely than not a substantial factor in the challenged employment action. *Id*. If the plaintiff relies on indirect evidence, the plaintiff must present a prima facie case allowing an inference of discrimination. *Id* at 134. To establish a prima facie case, a plaintiff must present evidence that "(1) she belongs to a protected class, (2) she suffered an adverse employment action, (3) she was qualified for the position, and (4) her failure to obtain the position occurred under circumstances giving rise to an inference of unlawful discrimination." *Id*. If the plaintiff establishes a prima facie case, "the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the adverse employment action." *Id*. If the defendant produces evidence of a nondiscriminatory reason, the burden shifts back to the plaintiff "to show that the defendant's reasons were not the true reasons, but a mere pretext for discrimination." *Id.*

Here, the record contains no direct proof of discrimination, no evidence giving rise to an inference of discrimination, and no proof of a causal link between the alleged discriminatory animus and defendant's decision to terminate plaintiff. Defendant presented evidence that it eliminated a number of positions, which affected the work available for plaintiff's department. In addition, defendant presented evidence that plaintiff's work performance did not meet expectations. Nothing in the record indicates that plaintiff or others of Chinese origin were treated differently during defendant's reductions in force.

Similarly, the record contains nothing to establish a prima facie case of retaliation under the CRA, which requires a showing "(1) that a plaintiff engaged in a protected activity, (2) that this was known by the defendant, (3) that the defendant took an employment action adverse to the plaintiff, and (4) that there was a causal connection between the protected activity and the adverse employment action." *Meyer v City of Centerline*, 242 Mich App 560, 568-569; 619 NW2d 182 (2000). Plaintiff testified that the protected activity in which she engaged was a May 2009 meeting, but she offers no causal link between this meeting and her termination. In sum, the trial court properly granted summary disposition on plaintiff's CRA claims.

The trial court was also correct in granting summary disposition on the emotional distress claim. The claim arose from an incident after plaintiff's termination in which she entered defendant's premises (despite her key card having been deactivated), erased files from an office computer, and took certain items from a work area. Defendant contacted the police after learning of this intrusion.

"To establish a prima facie claim of intentional infliction of emotional distress, the plaintiff must present evidence of (1) the defendant's extreme and outrageous conduct, (2) the defendant's intent or recklessness, (3) causation, and (4) the severe emotional distress of the plaintiff." *Dalley v Dykema Gossett PLLC*, 287 Mich App 296, 321; 788 NW2d 679 (2010) (internal quotation omitted). "Liability for the intentional infliction of emotional distress has been found only where the conduct complained of has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community." *Doe v Mills*, 212 Mich App 73, 91; 536 NW2d 824 (1995). Accordingly, "[l]iability does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." *Id.*

The record does not demonstrate conduct that would support a claim of intentional infliction of emotional distress. Defendant's decision to contact the police was neither extreme nor outrageous, given that plaintiff entered the premises without authorization and removed items from the premises.

Affirmed.

/s/ Michael J. Kelly
/s/ Henry William Saad
/s/ Peter D. O'Connell